

204-06/MEU

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL STEPSKI, KIRSTEN STEPSKI, Wife,
GEAL RODERICK AND BENJAMIN SCHOBER,

06 CV 01694 (CM)

Plaintiffs,

- against -

THE M/V NORASIA ALYA, her owners,
operators, etc., and MS "ALENA"
SCHIFFAHTSGESELLSCHAFT mbH & CO.,
KG., PETER DOHLE SCHIFFAHTS-KG,

**AFFIRMATION OF
MICHAEL E. UNGER
IN SUPPORT OF
DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

Defendants.

MICHAEL E. UNGER, an attorney duly admitted to practice in the Courts of the State of New York, hereby affirms under penalty of perjury as follows:

1) I am a partner with the firm of Freehill Hogan & Maher LLP, counsel for Defendants' MS "ALENA" SCHIFFAHTSGESELLSCHAFT mbH & CO., KG. and PETER DOHLE SCHIFFAHTS-KG ("Defendants"). I am fully familiar with the pleadings and this case through my handling of it.

2) This Affirmation is respectfully submitted in support of that portion of Defendants' Motion for Summary Judgment which seeks an order:

a. dismissing the claims of Plaintiff Kirsten Stepski based on the fact that the Third and Fourth causes of action of Plaintiffs' Amended Complaint are not cognizable under the general maritime law of the United States;

- b. ruling that in not seeking proper mental health treatment, plaintiffs have failed to mitigate their damages; and
- c. ruling that Defendants are entitled to contribution from Stepski for any recovery by plaintiffs Roderick and Schober attributable to Stepski's breach of his cure obligations.

- 3) Plaintiff Kirsten Stepski alleges that Defendants' conduct caused her physical and emotional injury. Plaintiff additionally alleges that she is entitled to money damages for loss of consortium. A copy of the Amended Complaint is attached to the Singleton Aff. as Exhibit "A."
- 4) Plaintiffs' Amended Complaint undisputedly alleges that "The matter is subject to the general maritime law of the United States." (Singleton Aff., Ex "A" at Paragraph 10).
- 5) Plaintiff Kirsten Stepski was deposed on April 12, 2007. A copy of the transcript of her deposition is attached hereto as Exhibit "J".
- 6) To assist with the presentation of their claims, Plaintiffs retained and were examined by psychiatrist, Dr. Arnold Merriam, who was deposed on July 11, 2008. A copy of his deposition is attached hereto as Exhibit "K".
- 7) Nearly two months after the alleged accident, Plaintiffs Michael Stepski and Geal Roderick sought the assistance of a psychologist, Dr. Gloria Small, who briefly treated them. Dr. Small was deposed on July 18, 2008. A copy of her deposition is attached hereto as Exhibit "L".
- 8) Plaintiffs Kirsten Stepski and Benjamin Schober were never seen by Dr. Small and never sought treatment for their alleged injuries. (Exhibit "L" at pages 15-16).
- 9) Plaintiffs Stepski and Roderick were introduced to Dr. Small through their attorney Ron Stevens. (Exhibit "L" at pages 12).

10) As Plaintiff Kirsten Stepski has failed to make out a *prima facie* claim for emotional injury and loss of consortium under the general maritime law, her claim should be dismissed as a matter of law.

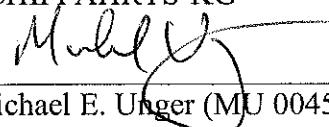
11) As all four Plaintiffs failed to seek out and obtain proper and adequate medical treatment for their alleged mental and psychiatric injuries, Defendants are entitled to a ruling that Plaintiffs have failed to mitigate their damages.

12) As Plaintiff Michael Stepski breached his duty to provide proper maintenance and cure to Plaintiffs Roderick and Schober, Defendants are entitled to recover against Stepski on their counterclaims for any damages which are found in favor of Plaintiffs Roderick and Schober for aggravation of their alleged mental injuries resulting from Stepski's breach of his duty.

Dated: New York, New York
December 23, 2008

FREEHILL HOGAN & MAHAR LLP
Attorneys for Defendants
MS "ALENA" SCHIFFAHRTSGESELLSCHAFT
GmbH & CO., KG. and PETER DOHLE
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